

also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 24, 2003.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

**FOR FURTHER INFORMATION CONTACT:**

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Issued on: October 20, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

[Docket No. NHTSA-02-12087; Notice 2]

**Century Products; Denial of Application for Decision of Inconsequential Noncompliance**

Century Products, a Division of Graco Children's Products, Inc. (Century Products and Graco), of Macedonia, Ohio, determined that as many as 185,175 child restraints fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child restraint systems," and filed appropriate reports pursuant to 49 CFR Part 573, "Defect and Noncompliance Responsibility and Reports." Century Products also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to safety.

Notice of receipt of the application was published, with a 30-day comment period, on May 17, 2002, in the **Federal Register** (67 FR 35188). NHTSA received one comment, from Advocates for Highway and Auto Safety (Advocates).

FMVSS No. 213, Paragraph S5.1.1, states that when a child restraint system is tested in accordance with S6.1, it shall "[e]xhibit no complete separation of any load bearing structural element and no partial separation exposing either surfaces with a radius of less than 1/4 inch or surfaces with protrusions greater than 3/8 inch above the immediate adjacent surrounding contactable surface of any structural element of the system."

In its Part 573 Defect and Noncompliance Information Report filed with the agency on December 11, 2001, Century Products stated that "On December 5, 2001, Century Products \* \* \* decided that a noncompliance with Federal Motor Vehicle Safety Standard No. 213 exists in \* \* \* certain \* \* \* "Celestia" model infant car seats manufactured by Century Products. \* \* \* "The Celestia infant seat is sold with a detachable base that may be used to permit a fixed installation into the vehicle, allowing the child seat to be taken in and out of the vehicle without having to do a complete installation each time. The Celestia infant seat can also be used without the detachable base. Century Products identified 185,175 Celestia infant car seats manufactured between January 1, 2000, and December 6, 2001, that may contain this noncompliance. In its Application for Decision of Inconsequential Noncompliance, Century Products stated that it:

has discovered variations in the plastic molding process during the manufacture of the plastic shell of the carrier portion (not the base) of the Subject Products, which can result in a void in the shell wall. This void may cause shell wall separation during the dynamic crash test specified by FMVSS No. 213 when the base is not used, rendering the seat noncompliant. \* \* \* There is no noncompliance problem when the car seat is installed in the vehicle *with the base* (emphasis in original).

In its Part 573 Report, Century Products stated that:

Graco conducted a dynamic crash test audit of its Celestia infant car seats on December 4, 2001. Graco tested (ten) 10 Celestia infant car seats without the base, randomly taken from inventory. Four (4) of the ten (10) units exhibited wall separation and the presence of a void at the initiation point of the separation. As a result of this audit testing, Graco determined that a noncompliance existed.

Century Products believes that the FMVSS No. 213 noncompliance described above is inconsequential to motor vehicle safety. Century Products supported its application for inconsequential noncompliance with the following:

The risk of injury resulting from the wall separation during the dynamic crash test is inconsequential for several reasons. First, the shell wall separation does not affect, increase, or adversely influence the seat back angle. Thus, the restraint systems comply with FMVSS 213 S5.1.4, which provides that "[w]hen a rear-facing child restraint system is tested in accordance with S6.1, the angle between the system's back support surface for the child and the vertical shall not exceed 70 degrees."

Second, all portions of the test dummy's torso were retained within the system and all

other requirements regarding target points on either side of the dummy's head comply with FMVSS 213 S5.1.3.2.

Third, the infant shell remained securely attached to the lap belt during testing. The separation did not contribute to any degradation in the ability of the vehicle belt to retain the infant seat in its original position.

Fourth, the shell wall separation did not create an opening that contributes to the pinching, shearing, or scissoring of fingers, toes, or limbs or any other body part of either the occupant or an adjacent child seated next to the infant seat. The seat pad also acts as a mechanism to keep the occupant from contacting the separated area.

Fifth, the shell wall separation occurs at relatively high energy levels, with the separation occurring late in the application of energy of the crash test (as revealed by Century Products' review of the flexing of the infant shell wall). Few motor vehicle accidents occur at the maximum energy levels of the dynamic crash test. The possibility of a wall separation occurring in the field therefore is remote.

Sixth, the shell wall separation occurs only in a high stress area on the shell when the shell is used *without the base*. When the shell is used with the base, the area in question experiences no significant stress. All of the subject products were sold with a stay-in-the-car base. The base is the most predominately used mode with the infant shell due to its convenience of removing the carrier from the vehicle.

Seventh, in the approximately 18 months that the infant shell has been in use in the subject products, there have been no reports of any incidents or complaints regarding the wall separation on the shell.

Eighth, product owners are advised in the accompanying literature that the seat should be discarded following a crash. In addition, it is a well-known industry practice to discontinue using a child restraint after it has experienced a crash. Thus, there is little risk of injury from the wall separation during a subsequent incident.

Based on the above, Century Products believes that a child subjected to a crash will be fully protected as required by FMVSS No. 213.

NHTSA has reviewed Century Products' application and concluded that the noncompliance is not inconsequential to safety for the following reasons.

The requirements to be met in the dynamic testing of child restraints include: (1) Maintaining the structural integrity of the system, (2) retaining the head and knees of the dummy within specified excursion limits, and (3) limiting the forces exerted on the dummy by the restraint system. These requirements reduce the likelihood that a child using a complying child restraint system will be killed or injured by the collapse or disintegration of the system, by contact with the interior of the vehicle, or by imposition of intolerable forces by the restraint system. Omission

of any one of these three requirements would render incomplete the criteria for the quantitative assessment of the safety of a child restraint system and could lead to the design and use of unsafe restraints. It follows that the failure to comply with one or more of these three requirements will increase the likelihood that a child may be killed or injured in the event of a crash.

Graco's dynamic crash test audit of 10 units selected at random confirmed that, in this limited series of tests, four of the selected units "exhibited wall separation and the presence of a void at the initiation point of the separation." However, there is no way for either Graco, Century Products, or NHTSA to assure that the location, extent, and consequences of the structural failures seen in this limited series of tests is representative of the performance of *all* potentially defective units that have been manufactured. In its comments, Advocates states that:

Nothing indicates that the wall separation occurs only in a location that cannot be reached by either the infant occupant or another child passenger. Furthermore, this conclusion is premised entirely on the four failures that were found in the Applicant's test of Celestia infant seats taken from its inventory. Those tests may not reveal the full extent and location of wall separation that may occur in the 40 percent (or more) noncompliant models in use. There is no evidence that suggests that the four test failures accurately reflect the full scope, extent and location of shell wall separation that could potentially occur in real-world crashes.

While Century Products contends "[t]he seat pad also acts as a mechanism to keep the occupant from contacting the separated area," we agree with Advocates that it is possible that the seat pad could prevent a parent "from observing that the infant seat has suffered shell wall separation. Indeed, unless a close inspection is conducted, the shell wall separation may not be detected. \* \* \*" Notwithstanding Century Products' assertion that it is a "well-known industry practice" to discard a child seat that has been in a crash, it is likely that many parents will continue to use a restraint that does not exhibit any evidence of damage. A child restraint that has been structurally damaged in a crash, but has not been replaced and remains in use, is unlikely to be capable of adequately protecting

the child in the event of a subsequent crash.

With respect to the assertion by Century Products that "[t]he base is the most predominately used mode with the infant shell due to its convenience of removing the carrier from the vehicle," Advocates commented:

The implication of this contention is that the base is used in most cases and, therefore, actual shell wall separation is a remote possibility. Aside from the fact that the Applicant presents no data to support its assertion that the "base is the most predominately used mode with the infant shell due to its convenience," the Applicant acknowledges that the infant carrier shell can be used as a separate, independent seat without the detachable base. This use is readily foreseeable even if the Applicant did not affirmatively advertise the separate use of the detachable carry shell. The possibility that some portion of the public will use the carry shell without the base is not remote.

We concur with Advocates. In addition, we note that it is possible that some parents will leave the base installed in one vehicle and use the restraint without the base in other vehicles. In any event, the relative frequency of use with and without the base is not relevant to the issue of the safety risk that is present when the base is not used.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is hereby denied. Century Products must now fulfill its obligation to notify and remedy under 49 U.S.C. 30118(d) and 30120(h).

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 16, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### Office of Hazardous Materials Safety; Notice of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before (30 days after publication).

**ADDRESSES:** Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

#### FOR FURTHER INFORMATION CONTACT:

Copies of the applications (*See* Docket Number) are available for inspection at the New Docket Management Facility, PL-401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at <http://dms.dot.gov>.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 20, 2003.

**R. Ryan Posten,**

*Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.*